

CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

(A.F., *et al.* v. County of Riverside, *et al.*) – U.S.D.C. Case No. 5:15-cv-01603-JGB-DTBx)

1. PARTIES.

This Settlement Agreement and Mutual Release (“Agreement”) is entered into by and between Plaintiffs A.F., by and through his guardian *ad litem* Teri Jecmen, individually and as a successor in interest to Aaron Forgash, deceased; J.A., by and through his guardian *ad litem* Jamie Austin, individually and as a successor in interest to Aaron Forgash, deceased; and Teri Jecmen, individually (“Plaintiffs”) and Defendant Chad Fountain (“Fountain”) and Fountain’s employer, the City of Corona (“City”). Plaintiffs, Fountain and the City are sometimes referred to individually as “Party” and collectively as the “Parties” in this Agreement.

2. RECITALS.

2.1 Subject Action. On or about August 6, 2015, Plaintiffs filed a complaint in the United States District Court for the Central District of California, Case No. 5:15-cv-01603-JGB-DTBx against the County of Riverside and certain deputy sheriffs, and thereafter filed a Second Amended Complaint naming Fountain as a defendant (the “Subject Action”). In the Subject Action, Plaintiffs allege, in essence, that Riverside County and the deputy sheriff defendants are liable for the deputy involved shooting death of Plaintiffs’ decedent, Aaron Forgash, and that Fountain used excessive force on Forgash by deploying a police K-9 to bite Forgash after he had been shot (the “Incident”).

2.2 Denial of Plaintiff’s Allegations. Fountain denies generally and specifically each of the allegations made against him in the Subject Action, and further denies any wrongdoing or liability.

2.3 Settlement. The Parties now desire to fully and finally settle and resolve any and all rights, claims, disputes, causes of action and alleged claims which currently exist or may in the future exist in favor of the Parties, including, but not limited to, all claims arising out of and set forth in the Subject Action. The Parties expressly intend that this settlement shall further pertain to any claims for attorneys’ fees, expert fees, witness fees, and/or other costs, and any alleged claims for abuse of process, malicious prosecution, civil rights violations, etc., in connection with the Subject Action.

2.4 Consideration. In consideration of the foregoing recitals and mutual covenants and warranties set forth herein, and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree to the terms of this Agreement.

3. TERMS.

3.1 Recitals. The Recitals are incorporated into and are a part of this Agreement.

ORIGINAL

3.2 City Settlement Obligation. In consideration of this Agreement, and the promises set forth herein, the City, on behalf of Fountain, agrees to pay to Plaintiffs and their counsel the total sum of Thirty-Eight-Thousand Dollars (\$38,000.00) (the "Settlement Amount") in full and complete settlement of the claims asserted against Fountain in the Subject Action and any liability of Fountain and the City arising out of the Incident. The Settlement Amount shall be in the form of a check payable to the Law Offices of Dale K. Galipo, and shall be made within ten (10) business days of the execution of this Agreement by Plaintiffs and their counsel. Plaintiff or Plaintiff's Counsel shall provide to City two (2) executed copies of this Agreement, along with a completed W-9 for the payee of the Settlement Amount, in order to facilitate payment and compliance with this Agreement.

3.3 Plaintiffs' Settlement Obligation; Dismissal of Action. In further consideration of this Agreement, and the promises set forth herein, Plaintiffs agree to execute and cause to be filed a full and complete dismissal of the Subject Action as against Fountain, with prejudice, within three (3) business days of payment of the Settlement Amount. Plaintiff will also file a notice of settlement at least (3) business days of prior to the scheduled March 27, 2017 hearing on Fountain's motion for summary judgment.

3.4 Each Party to Bear Its Own Costs and Fees. Each Party shall bear its own attorney's fees and all other costs (including costs of expert witnesses or other consultants) incurred in the preparation for filing, prosecution of and defense of the Subject Action and in the preparation, negotiation, and drafting of this Agreement. This paragraph shall affect any rights Plaintiffs or their counsel may have to recover attorney fees and costs against the County of Riverside and deputy defendants.

3.5 Mutual Release. In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, and except as to the rights, duties, and obligations of the Parties as set forth in this Agreement, the Parties, and each of them, hereby release and fully, finally and forever discharge each and every other Party, as well as their respective elected and appointed officials, board members, owners, predecessors, successors, heirs, executors, administrators, members, managers, assigns, agents, directors, officers, partners, employees, representatives, insurance companies, law firms and lawyers, and all persons acting by, through, under, or in concert with them or any of them, past and present (hereinafter collectively called "Additional Releasees") of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Released Claims"), including, without limitation, Released Claims which any Party now has or may in the future have against any other Party and/or the Additional Releasees, as alleged in or arising out of, or which could have been raised in or could have been related to the Incident and/or Subject Action.

3.6 Civil Code section 1542 Release. The Parties, and each of them, intend that this Agreement shall be a full and final settlement of and bar to any and all claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims. In connection with the release made herein, the Parties acknowledges that they may hereafter discover facts different from or in addition to the facts which they may know or believe to be true with respect to the Subject Action and/or the Released Claims, but that they intend to fully

and forever settle all disputes with each other and Additional Releasees. In furtherance of such intention, the release given herein shall be and remain in effect as a full and complete mutual release, notwithstanding discovery of any such different or additional facts. Therefore, the Parties acknowledge that they have been informed of, and are familiar with, the provisions of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, and each of them, hereby waive and relinquish all rights and benefits under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims.

3.7 Continuing Jurisdiction of Court. The Parties stipulate that the Court shall continue to have jurisdiction over this matter to enforce this settlement pursuant to Code of Civil Procedure section 664.6 and any analogous provision or principle of federal law.

3.8 Denial of Liability. The Parties agree and mutually acknowledge that this Agreement is for settlement purposes only. The Parties have denied, and continue to deny, any wrongdoing in connection with the actions or inactions alleged in the Subject Action. Neither this Agreement nor any action taken pursuant to this Agreement shall constitute any admission of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties, or any admission by and of the Parties of any claim or allegations made in any action against such party. This Agreement is entered into to avoid the attorneys' fees, costs, expenses and risks associated with continued litigation of the claims and defenses asserted in the Subject Action, including, without limitation, the Released Claims.

3.9 No Assignment of Claim. The Parties represent and warrant that they have not sold, assigned or transferred, or purported to sell, assign or transfer, and shall not hereafter sell, assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, rights, actions, or causes of action released pursuant to this Agreement, including, without limitation, the Released Claims.

3.10 Tax Consequences. The Parties make no representations as to whether there are any tax consequences associated with this Agreement, including, but not limited to, the Settlement Amount. The Parties agree that each Party is responsible for making its own determination of the tax consequences of the settlement and this Agreement.

3.11 Integrated Agreement. This Agreement is the final and entire agreement between the Parties concerning the subject matter of this Agreement. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings of the Parties. This Agreement cannot be modified except by a written document signed by all of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated agreement.

3.12 Warranty of Authorization. Any person executing this Agreement on behalf of any Party does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Agreement on behalf of, and to fully bind, such Party.

3.13 Independent Representation by Counsel. The Parties represent and declare that in executing this Agreement, they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, if they chose to retain counsel, concerning the nature, extent and duration of their rights and claims hereunder, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omission pertaining to any of the matters herein contained by any Party or by any persons representing any Party. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiating and preparing this Agreement, or could have had such assistance and voluntarily declined to obtain such assistance.

3.14 Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons and transactions having legal contacts and relations solely within the State of California. Venue for any such action shall be in the Superior Court for the County of Riverside.

3.15 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such a portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force and effect as though such invalid or unenforceable provisions or portions had not been a part of this Agreement.

3.16 Construction. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

3.17 Headings. The headings of this Agreement are for convenience and ease of reference only, and shall not be used to construe, expand, or limit the terms of this Agreement.

3.18 Execution in Counterparts. This Agreement may be executed in counterparts by the Parties, by either an original signature or signature transmitted by facsimile or electronic transmission, or other similar process, and shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement. All counterparts so executed shall constitute one Agreement, binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

3.19 Attorney's Fees. Should any Party hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, as set forth in the Agreement, including, but not limited to, instituting or defending any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision hereof, for declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, then, if said matter is settled by arbitration or judicial determination, the prevailing Party shall be entitled to be reimbursed by the losing Party or Parties for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

3.20 Survivability of Covenants. All representations and agreements set forth in this Agreement shall be deemed continuing and shall survive the execution date of this Agreement.

3.21 No Construction Against Drafter. Each of the Parties agrees that each has participated in arriving at the final language of this Agreement and, therefore, this Agreement shall not be construed against any party as the drafter.

3.22 Covenant to Take Further Actions Necessary. The Parties hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purpose of this Agreement, with the Parties to bear their own costs and attorneys' fees for these additional actions.

3.23 Third-Party Beneficiaries. Except for the rights of beneficiaries pursuant to the releases provided, there are no third-party beneficiaries to this Agreement, and nothing herein shall confer any enforceable rights on non-signatory persons or entities.

3.24 Effective Date. This Agreement shall be effective as of the date of its complete execution by the last signing Party.

3.25 Valuable Consideration; Finality. This Agreement is entered into in consideration of the recitals, promises, mutual covenants and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties. This Agreement is intended to be final and binding on each of the Parties, and is further intended to be effective as a full and final accord and satisfaction between them regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, or any other circumstances whatsoever. Each Party relies upon the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

[SIGNATURES ON FOLLOWING 2 PAGES]

**CITY-FOUNTAIN
SIGNATURE PAGE FOR
CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

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THE UNDERSIGNED HEREBY DECLARES THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD, AND BY EXECUTION HEREOF VOLUNTARILY ACCEPTS THE TERMS WITH THE INTENT TO BE LEGALLY BOUND THEREBY.

By:


Chad Fountain

4-5-17

Date

CITY OF CORONA

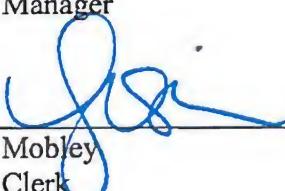
By:


Darrell Talbert
City Manager

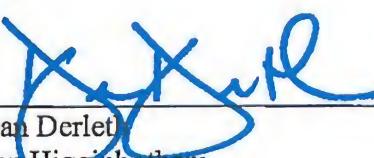
4-6-17

Date

Attest:


Lisa Mobley
City Clerk

Approved as to Form:


Dean Derlet
John Higginbotham
City Attorney's Office
Attorneys for Chad Fountain

PLAINTIFFS
SIGNATURE PAGE FOR
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By:

Teri Jessmen
Individually, and as guardian *ad litem*
for A.F.

Date

By:

Jamie Austin
As guardian *ad litem* for J.A.

3-21-2017

Date

Approved as to Form:

Dale K. Galipo
Renee V. Miasongsong
Law Offices of Dale K. Galipo
Attorneys for Plaintiffs

PLAINTIFFS
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By:



Teri Jecmen
Individually, and as guardian *ad litem*
for A.F.



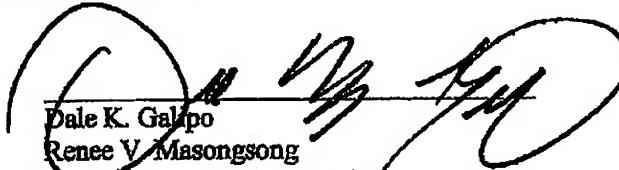
Date

By:

Jamie Austin
As guardian *ad litem* for J.A.

Date

Approved as to Form:



Dale K. Galpo
Renee V. Masongsong
Law Offices of Dale K. Galpo
Attorneys for Plaintiffs